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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SAN RAMON VALLEY FIRE PROTECTION DISTRICT,

Plaintiff and Appellant,

v.

JAMES M. STROCK, as Secretary, etc., et al.,

Defendants and Respondents.

G030408

(Super. Ct. No. 795250)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven J. Sundvold, Judge. Affirmed.

Law Offices of William D. Ross, William D. Ross and Robert D. Pontelle for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Richard M. Frank, Chief Assistant Attorney General, Theodora Berger, Senior Assistant Attorney General, and Raissa S. Lerner, Deputy Attorney General, for Defendants and Respondents.

This appeal concerns a decision by the California Environmental Protection Agency (the EPA) to deny a local agency's application to become a "certified unified

program agency" or "CUPA," solely responsible for implementing hazardous materials regulations within its jurisdiction.

In 1993, the Legislature enacted a statutory scheme to streamline the administration of various environmental programs regulating the generation and storage of hazardous materials and waste. (See Health & Saf. Code, § 25404 et. seq.)[1] Commonly referred to as the "CUPA statute," this legislation consolidated the administration of six preexisting state regulatory programs into a single "certified unified program agency" (CUPA) for a given geographic region or territory. Under the statute, a county might have a single CUPA or multiple coordinated CUPAs, each responsible within its territory for issuing, administering, and enforcing a single unified permit for the six state programs.

The San Ramon Valley Fire Protection District (the District) applied to become the CUPA within its jurisdiction, which consisted of two cities and various unincorporated communities. The District faced a roadblock, however: Contra Costa County (the County) applied to be the CUPA for the entire county, which included the territorial bounds of the District. Faced with these competing applications, the Secretary of the EPA (the Secretary) approved the County's CUPA application and denied the District's.

The District filed an action in the superior court for declaratory and mandamus relief, seeking to reverse that administrative decision. The trial court denied the requested relief. The District appeals from that judgment, but we find no error and affirm.

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[1] All further statutory references are to the Health and Safety Code.

BACKGROUND

1. *The CUPA Statute*

The CUPA statute set in motion a three-tiered application process. It first authorized any city or local agency which, as of December 31, 1995, had already been administering certain elements of the new "unified program," to apply to the Secretary to be the CUPA within the jurisdictional boundaries of that city or local agency. (§ 25404.1, subd. (b)(2)(A).) A city or local agency that applied under that provision is commonly referred to as a "(b)(2)(A) applicant."

Next, the CUPA statute required every county to apply to the Secretary by January 1, 1996, to be the CUPA for those areas within its jurisdiction (including both cities and unincorporated areas) for which no CUPA application had been filed by a city or local agency. (§ 25404.1, subd. (b)(1).) Read together, these first two provisions ensured that as of January 1, 1996, all areas of a county would be included in a CUPA application, whether it be a single countywide application or one of several applications filed by cities, local agencies, and the county, together encompassing all county territory.

Relegated to the last tier of the CUPA application process was any city or local agency that had *not* been administering the specified elements of the unified program as of December 31, 1995 — in other words, any local entity not qualified to be a (b)(2)(A) applicant. Significantly, such an entity had no *right* to file a CUPA application. Instead, it could apply to be the CUPA within its jurisdictional boundaries only "if it enters into an agreement with the county to become the [CUPA] within those boundaries." (§ 25404.1, subd. (b)(2)(B).) Alternatively, if the local entity (called a "(b)(2)(B) applicant") was unable to arrange an agreement with the county, the entity could seek permission from the Secretary to file its own CUPA application. The statute provided that "the secretary may, in his or her discretion, approve the request." (*Ibid*.)

2. *The District's CUPA Application*

The District was a (b)(2)(B) applicant. Prior to December 31, 1995, it had administered within its jurisdiction the Uniform Fire Code — one of the six elements of the unified program but not one of the elements that qualified an agency for (b)(2)(A) applicant status. In November 1995, the District sought to enter into an agreement with the County allowing the District to be the CUPA within its own "jurisdictional footprint." The County refused, declaring its intent to serve as the CUPA for the entire county.

Prior to 1996, the County was administering a substantial portion of the unified program throughout its jurisdiction, and no city or agency qualified as a (b)(2)(A) applicant. On December 22, 1995, the County submitted its application for certification as a countywide CUPA. For its part, the District persisted in its efforts to be certified as a CUPA, timely seeking permission from the Secretary to file a CUPA application as a (b)(2)(B) applicant.

On May 15, 1996, the Secretary granted the District permission to apply. The Secretary explicitly noted, however, that permission to apply "is non-binding in terms of whether [the] application will be approved or not." In the months that followed, the District submitted several revised applications. On October 23, the Secretary held a public hearing on all the applications within Contra Costa County.

On December 31, the Secretary approved the County's application and issued a notice of intent to deny the District's application. The notice advised the District of the grounds for denial. It focused specifically on the fact the District and the County "have applied for certification within the same jurisdiction[]" and "have been unable to resolve this overlapping jurisdictional issue." The Secretary noted the two applicants "have not submitted agreements or any other documentation that demonstrates a coordinated and consistent program throughout the entire county." Given this lack of coordination and cooperation between the competing agencies, the Secretary was unable to make two specific findings statutorily required for certifying the District as a CUPA.

The CUPA statute prohibits the Secretary from certifying an agency to be a CUPA unless the Secretary finds that as a result of certification (1)"[t]he unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located[]" and (2) "[t]he administration of the unified program throughout the entire county . . . will be less fragmented between jurisdictions, as compared to before January 1, 1994 . . . ." (§ 25404.3, subd. (c)(2)(A) & (B).) The Secretary cited his inability to make either finding as the ground for denying the District's application.

Conversely, the Secretary's letter to the County certifying it to be a CUPA included the requisite findings that the County's certification would lead to "coordinated and consistent" implementation of the unified program throughout the County and "less fragmented" administration of the unified program between jurisdictions in the County.

The District pursued an administrative appeal of the denial of its CUPA application. After considering additional information supplied by the District and conducting another public hearing, the Secretary denied the appeal. Essentially, the denial letter stated that the District's inability to resolve the issue of "jurisdictional overlap" in the County's and District's applications prevented the Secretary from making the "findings of countywide coordination and consistency" necessary for the District's certification.

3. *The Litigation*

The District sued for declaratory and mandamus relief. Its action was coordinated with lawsuits filed by three cities (Santa Ana, Anaheim, and Sunnyvale) that likewise had their CUPA applications denied based on "jurisdictional overlap" with a countywide application. Significantly, the three cities were (b)(2)(A) applicants.

The trial court bifurcated the declaratory relief portion of the coordinated cases and proceeded to decide a single issue: Can a county apply to be the CUPA for the same jurisdiction covered in an application filed by a (b)(2)(A) city or agency? Finding

the relevant statutory language unclear, the court considered the legislative history of the CUPA statute and concluded section 25404.1, subdivisions (b)(1) and (b)(2)(A) barred a county from applying for CUPA certification in any jurisdiction included in a (b)(2)(A) application.

This answer effectively resolved the case for the plaintiff cities who, unlike the District, were all (b)(2)(A) applicants. Counsel for the EPA and the cities stipulated to a remand for an administrative reconsideration of each city's CUPA application. This time, none of the cities would face competition from a county application covering the same territory: The court had ruled such competing county applications were barred by the CUPA statute. The EPA's attorney told the court that, as a practical matter, this guaranteed the cities' certification upon remand.

The declaratory relief decision resolved nothing, however, for the District. The court concluded that a (b)(2)(B) applicant did not have the same right to preempt a county CUPA application within its jurisdiction that a (b)(2)(A) applicant had. Thus the court severed the District's case from the cities' for purposes of deciding its mandamus claim.[2]

The court ultimately denied the District's petition for writ of mandate. The court rejected the District's claim that it was entitled on estoppel grounds to be treated as a (b)(2)(A) applicant. The court further concluded the Secretary's decision denying certification was supported by substantial evidence and within his discretion. Finally, the court found the District's various claims of due process violations unsubstantiated. This appeal followed.

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[2] As for the cities' mandamus actions, the court issued a writ of mandate directing the Secretary to vacate the CUPA certifications of the counties in which each city is located, and vacated the Secretary's decisions denying each city's administrative appeal from the denial of certification. The court ordered the Secretary to reconsider these appeals in light of the court's ruling in the declaratory relief action.

DISCUSSION

1. *The court properly treated the District as a (b)(2)(B) applicant.*

Despite the fact the District was a (b)(2)(B) applicant, it improbably seeks to be treated as a (b)(2)(A) applicant. Specifically, the District argues it is entitled on estoppel grounds to enjoy the benefit of the trial court's ruling that a (b)(2)(A) city or agency has the exclusive right to apply to be a CUPA within its jurisdiction. The argument has no merit.

The argument is grounded on the premise that the EPA "consistently treat[ed] the District exactly as it did the other (b)(2)(A) applicants." Evidence of this "consistent treatment" was the District's and other applicants' receipt of "the same memo recommending denial based on lack of coordination, the same responses to applicant questions regarding the performance of services, the same letter encouraging all applicants to enter Participating Agency agreements with their respective counties and the same letter purportedly denying the Application."

Like the trial court, we find the EPA's use of the "same" correspondence in communicating with (b)(2)(B) and (b)(2)(A) applicants does not mean the EPA "treated" the District as a (b)(2)(A) applicant. Nor did this administrative efficiency constitute an implied promise that the EPA would ignore the statutory distinctions between these two categories of applicants when making its certification decisions.

The District's estoppel claim is further undermined by the lack of any evidence of detrimental reliance. The District asserts only that its expectation of continued treatment as a (b)(2)(A) applicant led it to "focus[] its efforts on bolstering its application . . . , not on reaching an agreement with the County." The District suggests this "focus" hurt its chances for certification. But the assertion conveniently ignores the fact the County steadfastly refused to enter into any agreement with the District. In fact, the District acknowledged in several letters to the County that further efforts to reach an

agreement were futile, given the County's stance. Consequently, the District's focus on bolstering its application rather than reaching an agreement is hardly a basis for claiming detrimental reliance.

Finally, we reject the District's contention that by allowing coordination of the District's and the (b)(2)(A) applicants' actions for declaratory and mandamus relief the EPA waived the right to request severance of the actions later. The District argues severance of the District's action at the conclusion of the declaratory relief phase of the case "deprive[d] the District of the victory to which it was legally entitled." This argument is nonsensical.

The trial court granted declaratory relief to the (b)(2)(A) plaintiffs alone: It ruled that the CUPA statute gave (b)(2)(A) applicants the exclusive right to apply for certification within their jurisdictions. Conversely, the court ruled a (b)(2)(B) applicant had no similar right, and denied declaratory relief to the District. Consequently, severance of the District at that point deprived it of no "victory." The District was disadvantaged not by severance but by the unalterable fact that it was a (b)(2)(B) applicant rather than a (b)(2)(A) applicant.

2. The CUPA statute does not favor (b)(2)(B) applicants over counties.

The District also argues the trial court erred in interpreting the CUPA statute as affording "preferential treatment" only to (b)(2)(A) applicants. Sidestepping the plain language of the statute, the District claims the statute's legislative history establishes that *any* city or local agency seeking CUPA certification is entitled to preferential treatment vis-à-vis a competing county application, regardless of whether the city or local agency is a (b)(2)(A) or (b)(2)(B) applicant. This interpretation would elevate a (b)(2)(B) applicant from the bottom tier to the top of the CUPA application hierarchy, based on a legislative intent unexpressed in the statute.

The District's approach to statutory interpretation is faulty. "[T]he objective of statutory interpretation is to ascertain and effectuate legislative intent.

[Citations.] 'In determining intent, we look first to the language of the statute, giving effect to its "plain meaning."' [Citations.]" (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) If the statutory language "is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . . [Citations.]" (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

The trial court turned to the legislative history when it found section 25404.1, subdivision (b) ambiguous as to whether a county could file an application that included territory covered by a city's (b)(2)(A) application. (As explained earlier, that legislative history led the court to conclude that a county could not file such a competing application.) There is no similar statutory ambiguity with regard to a county's ability to compete with a (b)(2)(B) applicant.

The statute *requires* the county to apply to be the CUPA in any areas within its jurisdiction not included in a (b)(2)(A) application. On the other hand, a (b)(2)(B) applicant has no *right* to apply for CUPA certification. It can apply only if gets approval from the county or, failing there, from the Secretary. (§ 25404.1, subd. (b)(2)(B).) Not only is a (b)(2)(B) applicant denied a leg up in the competition, it is not even guaranteed a spot in the race. Meaning can get no plainer. The statute gives a (b)(2)(B) applicant *no* preference over a county applicant. There is no need "to resort to indicia of" legislative intent. (*Lungren v. Deukmejian*, *supra*, 45 Cal.3d at p. 735.)

The District tries yet another tack in arguing for an interpretation of the statute that gives preferential consideration to (b)(2)(B) applicants. The District argues that absent such a preference, the statute's "subsections contemplating multiple CUPA certifications in one county" would be "superfluous and idle" because a county will always be able to offer better coordinated, more consistent, and less fragmented administration than would several autonomous agencies. Essentially, the District urges us to find a statutory preference for (b)(2)(B) applications in order to make the prospects of multiple CUPAs within a county more likely.

But the Legislature's decision to make coordination, consistency, and lack of fragmentation prime considerations in the selection of a CUPA was a rational choice. We can neither second guess it nor seek ways to avoid it. Moreover, the provisions concerning multiple CUPAs are not superfluous: It is entirely possible the Secretary could find, in the right situation, that coordinated applications from several experienced, cooperating cities and local agencies satisfy the statute's coordination and consistency requirements better than that of a poorly organized county CUPA.

3. *Substantial evidence supports the Secretary's certification decision*.

The District challenges the sufficiency of the evidence supporting the denial of its CUPA application. The District asserts the evidence shows that it "was well-qualified to be a CUPA" and there was no evidence "the County was more qualified than the District[.]" In other words, the District argues the record supports a different decision than the one reached by the Secretary. This argument betrays the District's misunderstanding of the applicable standard of review.

In evaluating the sufficiency of the evidence, our review is limited to determining whether there is substantial evidence to support the Secretary's decision. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 320.) Our power "*begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . ." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) We find the Secretary's decision adequately supported here.

The CUPA statute sets forth certain criteria for the Secretary to use in deciding whether to certify an applicant. The statute requires the Secretary to consider factors such as the agency's technical expertise and training requirements, staff and budget resources, past performance in implementing hazardous materials regulations, and systems for recordkeeping and cost accounting. (§ 25404.3, subd. (b).) The Secretary found the District was qualified in all these areas.

There was a remaining impediment to certification, however. It was the Secretary's inability to make the requisite twin findings that certification of the District would result in both "coordinated and consistent" implementation of the unified program countywide, and "less fragmented" administration of the program between jurisdictions. (§ 25404.3, subd. (c)(2)(A)&(B).) The Secretary's notice of intent to deny the District's application stated the Secretary could not make these findings because of the District's failure to resolve the issue of the jurisdictional overlap between its application and the County's. More specifically, the notice cited the two applicants' failure, in light of these overlapping applications, to reach agreement as to how to provide "a coordinated and consistent program throughout the county."

The record supports the Secretary's finding that no such agreement was reached. Moreover, the Secretary reasonably concluded from the lack of such an agreement that the District would not be able to meet the statute's coordination and consistency goals. Finally, given the statutory imperative that these findings of coordination, consistency, and lack of fragmentation be made before certification can be had, the Secretary's decision not to certify the District was well within his discretion.

Likewise, the Secretary's decision to certify the County was supported by substantial evidence. The County was already administering a substantial portion of the unified program throughout its jurisdiction, and the record supports the Secretary's finding that the County was qualified in the requisite technical and administrative areas. Finally, even the District concedes that the County is advantageously positioned to provide coordinated and consistent implementation of the unified program countywide, as well as less fragmented administration of the program.

4. *The District's due process rights were respected.*

The District raises various due process objections to the Secretary's consideration and denial of its application. None is meritorious.

Initially, the District asserts the Secretary failed to make a "final decision" on its application. Not so. In the notice of intent to deny, the Secretary informed the District of his decision to deny its application and advised the District of its right to "appeal this *decision* within 30 days . . . ." (Italics added.) After the District appealed, the Secretary issued a written decision stating that "[e]vidence was not presented to . . . justify reversal of the Notice of Intent to Deny." That was a final decision.

The District complains of various aspects of the public hearing on its application. It asserts the EPA gave the District "only five minutes to present its arguments and answer questions at the hearing; . . . refused to swear in witnesses during the public hearing . . .; [and] failed to provide the District notice of the public's comments . . . ." These complaints fall flat.

The record indicates the five-minute limitation applied to comments from the public rather than to the presentations made by the District and other applicants. The District made no request for additional time at the hearing and does not explain how it was prejudiced by this purported limitation on its presentation. As for the failure to swear witnesses, the District made no request they be sworn. Finally, the District makes no showing it was blindsided or otherwise prejudiced by any public comments at the hearing. The announced purpose of the meeting was to solicit comments from the public and all applicants were given the opportunity to respond to the comments after the hearing. In fact, the District did respond to certain comments.

The District complains of other procedural deficiencies and slights that are even less consequential. We find the District has failed to establish any violation of its due process rights.

DISPOSITION

The judgment is affirmed. Respondent is entitled to its costs on appeal.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.